
ENGROSSED HOUSE BILL 2070

State of Washington 60th Legislature 2007 Regular Session

By Representatives O'Brien, Goodman and Pearson

Read first time 02/07/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to exceptional sentences; amending RCW 9.94A.537;
2 creating a new section; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** In *State v. Pillatos*, 150 P.3d 1130 (2007),
5 the Washington supreme court held that the changes made to the
6 sentencing reform act concerning exceptional sentences in chapter 68,
7 Laws of 2005 do not apply to cases where the trials had already begun
8 or guilty pleas had already been entered prior to the effective date of
9 the act on April 15, 2005. The legislature intends that the superior
10 courts shall have the authority to impanel juries to find aggravating
11 circumstances in all cases that come before the courts for trial or
12 sentencing, regardless of the date of the original trial or sentencing.

13 **Sec. 2.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read
14 as follows:

15 (1) At any time prior to trial or entry of the guilty plea if
16 substantial rights of the defendant are not prejudiced, the state may
17 give notice that it is seeking a sentence above the standard sentencing

1 range. The notice shall state aggravating circumstances upon which the
2 requested sentence will be based.

3 (2) In any case where a new trial or new sentencing hearing is
4 required, the superior court shall have the authority to impanel a jury
5 to consider any aggravating circumstances, as alleged by the state and
6 listed in RCW 9.94A.535(3) (a) through (y), at either the new trial or,
7 if no new trial is necessary, at the new sentencing hearing.

8 (3) The facts supporting aggravating circumstances shall be proved
9 to a jury beyond a reasonable doubt. The jury's verdict on the
10 aggravating factor must be unanimous, and by special interrogatory. If
11 a jury is waived, proof shall be to the court beyond a reasonable
12 doubt, unless the defendant stipulates to the aggravating facts.

13 ~~((+3))~~ (4) Evidence regarding any facts supporting aggravating
14 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented
15 to the jury during the trial of the alleged crime, unless the jury has
16 been impaneled solely for resentencing, or unless the state alleges the
17 aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i),
18 (o), or (t). If one of these aggravating circumstances is alleged, the
19 trial court may conduct a separate proceeding if the evidence
20 supporting the aggravating fact is not part of the res geste of the
21 charged crime, if the evidence is not otherwise admissible in trial of
22 the charged crime, and if the court finds that the probative value of
23 the evidence to the aggravated fact is substantially outweighed by its
24 prejudicial effect on the jury's ability to determine guilt or
25 innocence for the underlying crime.

26 ~~((+4))~~ (5) If the superior court conducts a separate proceeding to
27 determine the existence of aggravating circumstances listed in RCW
28 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall
29 immediately follow the trial on the underlying conviction, if possible.
30 If any person who served on the jury is unable to continue, the court
31 shall substitute an alternate juror.

32 ~~((+5))~~ (6) If the jury finds, unanimously and beyond a reasonable
33 doubt, one or more of the facts alleged by the state in support of an
34 aggravated sentence, the court may sentence the offender pursuant to
35 RCW 9.94A.535 to a term of confinement up to the maximum allowed under
36 RCW 9A.20.021 for the underlying conviction if it finds, considering
37 the purposes of this chapter, that the facts found are substantial and
38 compelling reasons justifying an exceptional sentence.

1 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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